THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.7692 of 2005

Date 07-09-2006

Between:
Mamanduru Munemma.

..... PETITIONER

AND

The District Collector, (Panchayat Wing) Nellore District, Nellore &others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.7692 of 2005

ORDER:

Heard the counsel on record.

Though the matter is appearing in the list under the interlocutory, at the request of the counsel on record, the main writ petition itself is being disposed of.

Submissions were made by both the counsel. The counsel for the petitioner taking this Court through the averments in the affidavit filed in support of the writ petition and submitting that the petitioner being an old lady belonging to the scheduled caste, her possession of the premises in question not to be disturbed and at any rate the same to be further renewed, if necessary, on payment of some enhanced rent. The learned counsel also explained that the prior writ petition was dismissed on the ground that the same became infructuous and hence, the said order would not come in the way.

Per contra, Sri Upender Reddy, learned counsel representing the third respondent, had taken this Court through the counter affidavit filed and would maintain that it is true that Room No.11 of N.S.R. Shopping Complex is reserved to the scheduled caste candidates for allotment as per rules. The learned counsel also had explained the facts and circumstances in detail and would submit that in the interest of protection of public exchequer of Gram Panchayat, the said room No.11 also to be put to auction, but, however, the participants should be only from the scheduled caste, except for this limitation, there are no other conditions imposed and the Gram Panchayat is interested in raising its funds. Learned

counsel also would submit that in view of the fact that the petitioner is not vacating the premises in question at all, it would be just and proper that liberty to be given to the third respondent to proceed with auction as per rules or in the alterative, let the first respondent, the District Collector, (Panchayat Wing) Nellore, take appropriate decision in this regard depending upon the facts and circumstances of the case.

Heard the counsel.

At the outset, it may be stated that always the interest of the Gram Panchayat and the public exchequer of the local body to be protected on proceeding with public auction as a general rule, whereas allotments to be made by way of renewal or otherwise to be always an exception.

This writ petition is filed seeking a Writ of Mandamus declaring the notice issued by the third respondent in ROC.No.44 of 2005 dated 29-03-2005 directing the petitioner to handover the possession of the room No.11 in N.S.R.Shopping Complex of Sullurupet Gram Panchayat without considering her application for renewal as illegal arbitrary, and direct the respondents to renew the lease of room No.11 in favour of the petitioner and pass such other orders.

It is stated that the Sullurupet Gram Panchayat had constructed shopping complex called as N.S.R. Shopping Complex with 11 rooms and in the said complex, room Nos.4,5 and 11 are reserved for different categories, and room No.11 was reserved for scheduled caste and room No.4 was allotted for APCO for running showroom. The Government issued G.O.Ms.No.75, dated 20-02-1980, directing all the Gram Panchayats to reserve certain number of shops to scheduled caste and others and they shall be exempted from auction, and following the said G.O., room No.11 is reserved for scheduled caste. It is stated that the petitioner belongs to

Arundhatiya caste and her husband was a cobbler and they were making a living on shoe-making and selling. It is also stated that since room No.11 was allotted to the scheduled caste, an application was made by her husband before the Gram Panchayat as well as the District Collector, Nellore requesting for allotment of the said room to him for lease to do business. It is also stated that the District Collector by his memo ROC.No.2987/91-A5, dated 13-06-1991 had granted orders directing the Gram Panchayat to allot the said room to the petitioner's husband on lease of Rs.200/- per month. Based on the said orders, the Gram Panchayat passed resolution No.45/91 dated 22-08-1991 accepting to allot the said room to her husband. As per the said order and resolution, the Executive Officer, Sullurpet Gram Panchayat by Roc No.10/91-A2 dated 28-08-1991, had directed her husband to deposit Rs.2,400/- (one year rental) and to execute an agreement and take possession of the said room from 01-09-1991, and also directed to pay the additional deposit of Rs.1,000/- towards security for electrical charges. It is stated that they were carrying on the business, and unfortunately in the year 1993, her husband died due to massive heart attack. After the death of her husband, the petitioner continued the business in the said premises and her name was incorporated in the place of her husband. In the year 1994, the petitioner filed an application for renewal of the lease of room No.11 in her name. It is stated that the lessees of room Nos.4 and 5 also filed renewal applications. The Gram Panchayat had accepted for renewal and, accordingly, the District Collector-first respondent vide orders in ROC.No.5822/87-A5 dated

07-05-1994 had granted permission to continue the petitioner in the said room for another period of three years i.e. upto

31-03-1997. It is stated that the petitioner had been continuing in the

said premises and she has been paying rents regularly. It is stated that the petitioner has been doing the business along with her sons. It is also stated that the petitioner filed an application before the third respondent quoting some rent and certain other factual details had been narrated. It is also stated that on 02-03-1997, petitioner filed an application before the first respondent bringing all the facts to the notice of the first respondent. It is further stated that the petitioner filed an application for renewal by quoting the rate as suggested by the third respondent and the petitioner was under bona fide impression that her application would be considered and lease would be renewed, but, to her utter surprise, she was served with notice issued by the third respondent in ROC.No.23/96-A3 dated 31-03-1997 informing that her lease period was over by 31-03-1997 and directed to handover the said room to the Gram Panchayat by 01-04-1997. It is also stated that except the said notice, petitioner did not receive any other notice or order rejecting her renewal application. At para 8 of the affidavit filed in support of the writ petition, certain rules had been referred to and it is stated that such rooms reserved for scheduled caste are exempted from public auction. It is also stated that the petitioner filed W.P.No.8049 of 1997 and obtained stay of eviction. It is also stated that on 11-02-2005 the advocate representing the petitioner without her knowledge submitted that the writ petition became infructuous and, accordingly, the writ petition was dismissed.

Counter affidavit is filed in detail narrating that the lease period expired on 31-03-1997 and the Gram Panchayat invited applications from the scheduled caste members towards the lease of room No.11 for a period of three years from 01-04-1997 to 31-03-2000 and the Gram Panchayat received two applications one from Smt M.Munemma, the petitioner and another from Sri K.Venkata

Subbaiah. They submitted applications stating that they were paying Rs.610/- and Rs.640/- per month respectively. It is also stated that Sullurpet Gram Panchayat, at that time, in its resolution No.82 dated 29-03-1997 had resolved to allot the said room to Sri K.Venkata Subbaiah for a lease amount of Rs.640/- as the highest bid and he also deposited a sum of Rs.7,680/- as security deposit. It is also stated that the then Divisional Manager while submitting the proposals had stated that as per the rules issued in G.O.Ms.No.75 PR dated 28-02-1976, which is in force till today, the allotment of room No.11 of N.S.R. Shopping Complex, Sullurpet Grampanchayat, shall be done by the District Collector, Nellore as per the recommendations of the Social Welfare Officer, Nellore since both are scheduled candidates. The District Social Welfare Officer while recommending the names of scheduled caste candidates to the District Collector, Nellore, has to keep in view the economic backwardness of the applicant and also the viability of the scheme. It is stated that in the meanwhile the petitioner approached this Court by filing W.P.No.8048 of 1997. It is needless to say that as already referred supra, the writ petition was dismissed as having become infructuous. It is specifically stated that the petitioner caused loss to the revenue of the Gram Panchayat. It is stated that after the disposal of the writ petition aforesaid, the petitioner was directed to handover room No.11 of N.S.R. shopping complex to the Gram Panchayat and also to pay arrears of lease amount to the Gram Panchayat for taking further action to allot the said room to the scheduled caste candidate as per the rules envisaged in G.O.Ms.No.75 PR dated 28-02-1976 and to avoid loss to the revenue of the Gram Panchayat. A specific stand was taken that the petitioner was not carrying any business and it is also false to state that after the death of her husband, she is continuing the business. It

is stated that the name of the petitioner was incorporated in the place of her husband and the renewal of the lease also is not denied. However, it is stated that it is false to state that she continued the business in the same premises even from 01-04-1997 onwards. It is stated that the petitioner is aged about 60 years and is not doing any business along with her sons in the said premises. It is further stated that one son of the petitioner is a private electrician and another is a fitter under a private contractor. It is false to state that among all the rooms in N.S.R. shopping complex, the room in question is the smallest one and all the rooms are in equal dimensions. It is stated that the petitioner filed an application for renewal of the lease of the room in her favour. It is false to state that the third respondent had asked the petitioner to quote Rs.610/- as monthly rent and there is nothing on record to state that if she quotes the said amount, her application would be renewed otherwise not. It is false to state that as per the instructions of the Executive Officer, she accepted to enhance the rent to Rs.610/- per month, and had mentioned the same in her application. It is stated that the petitioner filed an application dated 27-02-1997 only on 04-03-1997 before the Executive Officer, Gram Panchayat and the same was received by the Executive Officer on 16-05-1997 along with the Income and caste certificates and a copy of the said application was also filed before the Collector. It is further stated that the respondents had no knowledge that the petitioner filed a representation on 02-03-1997 to the District Collector. It is false to state that the petitioner filed an application for renewal by quoting the rate as suggested by the third respondent. It is also stated that the respondents received the applications from the petitioner and the said Kambakam Venkata Subbaiah quoting the monthly rent at Rs.610/- and 640 respectively and as the resolution No.82 of the Gram Panchayat accepted the

highest quotation of the said Kambakam Venkata Subbaiah, confirmed the lease in his favour commencing from 01-04-1997 to 31-03-2000 at the rate of Rs.640/ per month and sent the same to the second respondent for approval through the Divisional Panchayat Officer, Gudur in RC.No.1/97 A3 dated 01-04-1997. It is stated that the petitioner never carried on any business and had not obtained any licence from the Gram Panchayat to run the business and one Voluru Balsubrahmanyam son of Janardhan was carrying on rice business in room No.11 of N.S.R. Shopping Complex under licence No.255/95-96 dated 15-03-1996. It is also stated that the petitioner having obtained the lease from the Gram Panchayat for lease rent, used to sub-lease the same to others contrary to the terms of lease. It is also stated that the lease of room No.11 was confirmed as per the resolution of the Sullurpet Gram Panchayat at the rate of Rs.640/- in favour of the said Kambakam Venkata Subbaiah and he has deposited a sum of Rs.7,680/- being the one year rent as security deposit, and in view of the stay orders, the Gram Panchayat is not in a position to handover the possession to the successful bidder who belongs to the scheduled caste. It is also stated that the petitioner did not pay even the rent for the months of April and May, 1997 and she is not entitled to any interim relief. As already referred supra, the petitioner was sub-letting the room to others on higher rent. It is false to state that the petitioner brought to the notice of the Executive Officer that her two sons are educated unemployees and living on the business run in room No.11. It is stated that the Gram Panchayat gave lease of room No.11 to the said Kambakam Venkata Subbaiah, whose residence is within the Gram Panchayat area. It is stated that room No.11 is reserved for scheduled caste but as per the procedure laid down, the lease once granted is not permanent but

should be renewed from year to year. It is stated that no such application of the petitioner was neither received nor placed before the first respondent as per the records available. It is also stated that even after W.P.No.8047 of 1997 was dismissed as infructuous, the petitioner failed to vacate the premises and handover the possession of the room despite notice dated 29-03-2005 was served. It is stated that the petitioner had approached this Court with false and misleading allegations to obtain interim order to continue in the said room No.11 without proper renewal of lease granted by the Gram Panchayat right from 01-04-1997 and no discrimination was shown as alleged.

It is needless to say that unless there is specific exemption of the conduct of public auction by virtue of the provisions of the Act or the rules governing the field, the normal rule is that the public exchequer of the Gram Panchayats to be protected and the properties to be put to public auction only. This view was expressed by this Court in **Madiwada Ankineedu v. District Collector, Krishna**[1]. In the light of the factual controversy, there appears to be some disputes between the petitioner and the third respondent. Evidently the third respondent is interested in protecting the interest of the Gram Panchayat and its public exchequer. However, the petitioner is claiming shelter under a specified G.O. In the light of the specific stand taken by both the parties, this Court is of the considered opinion that it would be appropriate if the first respondent takes a decision in this regard. Hence the District Collector (Panchayat Wing) Nellore, the first respondent herein, to appreciate all the facts and circumstances and take an early decision in this regard, preferably, within a period of two weeks from the date of receipt of a copy of this order. It is needless to say that the first

respondent is at liberty to issue appropriate directions, keeping in view the interest of the Gram Panchayat, the third respondent and also the petitioner as well in accordance with the provisions of the statute and the statutory rules governing the field.

The Writ Petition is accordingly disposed of. No costs.

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07-09-2006

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[1] 2006(4) ALT 293